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In the Matter of)
)
1983 Cable Royalty)
Distribution Proceeding)

Docket No. CRT 84-1 83CD

ORDER

On April 24, 1985, the National Association of Broadcasters (NAB) filed a Motion for Declaratory Ruling. NAB requests that the Tribunal issue a declaratory ruling stating that United States commercial television broadcasters, as the holders of exclusive exhibition rights, are entitled to all the royalties arising from the syndicated exclusivity surcharge, except such portions as the Tribunal may allocate to syndicators for the loss of the protection previously provided by the "pre-clearance" portion of the FCC's rules and to the Music Claimants.

NAB argues that the clear language of the Copyright Act of 1976 (Act) established that (1) copyrights are divisible, (2) exclusive right holders are the copyright owners of the rights which they have been sold or licensed, and (3) those copyright owners are entitled to all of the remedies and protection of the Act, including the right to receive cable copyright royalties. NAB further argues that the royalty surcharge levied on cable systems when the syndicated exclusivity rules were repealed was

designed to compensate the owners of the copyright interest the syndicated exclusivity rules formerly protected. Therefore, NAB believes, commercial broadcasters' entitlement to the royalties arising from the syndicated exclusivity surcharge is established by law, and grant of its motion would eliminate the necessity to take evidence on this portion of the hearing. NAB cites 1979 Cable Royalty Distribution Determination, 47 Fed. Reg. 9879, 9893 (1982) as an example where the Tribunal has used the declaratory ruling procedure in the past.

We received oppositions to NAB's motion from the Program Suppliers, the Music Claimants, National Public Radio (NPR), the Devotional Claimants, the Canadian Claimants, and Public Broadcasting Service (PBS). The Program Suppliers believe that the claim of NAB to any portion of the surcharge royalties is devoid of merit, and that the requested declaratory ruling is not designed to provide the Tribunal with a full and fair presentation of informed views on the legal question presented. The Program Suppliers list two witnesses they plan to have testify on the issue, and request that they not be foreclosed from giving evidence at hearing. The Music Claimants believe that the issue of entitlement is a mixed question of fact and law, and so must await testimony before it may be decided. NPR opposes NAB's "fee-generation" approach. NPR does not believe it is the correct analysis, especially when applied to radio claimants. The Devotional Claimants argue that Section 111 of the Copyright Act does not provide for the segregation of the fees into distinct royalty "pools", but if the Tribunal does adopt a "fee-genera-

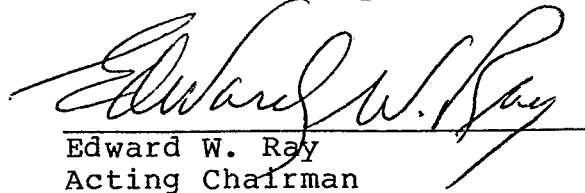
tion" approach, it should be applied consistently across the entire 1983 royalty fund. The Canadian Claimants also believe the issue is a mixed question of fact and law, and they also oppose creating separate royalty pools. PBS argues that NAB's request for an early disposition of a special issue is contrary to the procedures stipulated by the parties and adopted by the Tribunal earlier this year. PBS further argues that the issue is too complex and involves too many factual determinations to be resolved by the declaratory ruling procedure.

Discussion

Section 554(e) of the Administrative Procedure Act states, "The agency, with like effect as in the case of other orders, and in its sound discretion (emphasis ours), may issue a declaratory order to terminate a controversy or remove uncertainty."

Therefore, an agency need not issue a declaratory ruling whenever it is asked to do so. It is within its discretion to deny such requests. See, e.g., Yale Broadcasting Co. v. FCC, 478 F. 2d 594 (D.C. Cir. 1973). NAB argues that it is entitled to the royalties arising from the syndicated exclusivity surcharge as a matter of law, but we have received vigorous disagreement on this point from the Program Suppliers, the Music Claimants, NPR, the Devotional Claimants, the Canadian Claimants, and PBS. We would prefer, as we have traditionally done, to reach a conclusion on

the important issues of distribution after a full evidentiary hearing, affording each party a chance to present its views.¹ Therefore, the motion by NAB for a declaratory ruling is denied.


Edward W. Ray
Acting Chairman

June 3, 1985

¹We note that even the declaratory ruling to which NAB refers was granted "after hearing all testimony on the sports issue."
1979 Cable Royalty Distribution Determination, supra.

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